
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Prolink Inc.)	File Number: EB-04-LA-040
)	
Licensee of Station WPYZ348)	NAL/Acct. No. 200432900009
Las Vegas, Nevada)	
)	FRN 0001595495

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 20, 2004

By the District Director, Los Angeles Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Prolink Inc. ("Prolink"), licensee of station WPYZ348 in Las Vegas, Nevada, apparently willfully violated Section 1.903(a) of the Commission's Rules ("Rules")¹ by operating on an unauthorized frequency. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Prolink is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On March 9, 2004, field agents from the Commission's Los Angeles Office investigated a complaint of interference from a licensee on 456.3625 MHz in Las Vegas, Nevada. Using radio direction finding techniques, the field agents located a transmitter operating on 456.3625 MHz at the Las Vegas Paiute Golf Resort. The agents positively determined that this transmitter was causing the interference being received by the licensee in Las Vegas. Subsequent inspection of the radio transmitting equipment revealed that the transmitter was owned by Prolink which held the associated license (WPYZ348). The license held by Prolink and produced for the field agents, however, did not authorize Prolink to transmit on 456.3625 MHz. Later that day, a field agent from the Commission's Los Angeles Office contacted a representative from Prolink who stated that the frequency, 456.3625 MHz, was used intentionally because of interference problems with other channels. The representative also said that Prolink was in the process of attempting to license this frequency, but had not done so yet.³

¹47 C.F.R. § 1.903(a)

²47 U.S.C. § 503(b).

³On April 1, 2004, Prolink filed an application for modification of license WPYZ348 to include a number of frequencies, including 456.3625 MHz. *See* File No. 0001681799. This application for modification was granted on July 27, 2004. Prolink's remedial actions subsequent to a Commission investigation do not mitigate Prolink's liability. *See AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866 (2002).

III. DISCUSSION

3. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴

4. Section 1.903(a) of the Rules⁵ states that "[s]tatements in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part" At the time of the investigation, radio station license WPYZ348 authorized Prolink to transmit on a number of frequencies at the Las Vegas Paiute Golf Resort, however, 456.3625 MHz was not among those frequencies. Prolink acknowledged to a Commission field agent that it intentionally used the unlicensed frequency because of interference problems with other channels. Based on the evidence before us, we find that Prolink willfully violated Section 1.903(a) of the Rules by operating on an unauthorized frequency.

5. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for using an unauthorized frequency is \$4,000.⁶ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, a \$4,000 forfeiture is warranted.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Prolink Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violation of Section 1.903(a) of the Rules.⁸

7. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Prolink Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section,

⁴Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵47 C.F.R. § 1.903(a).

⁶12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

⁷47 U.S.C. § 503(b)(2)(D).

⁸47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 1.903(a).

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Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

9. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Rd., Suite 660, Cerritos, CA, 90703, and must include the NAL/Acct. No. referenced in the caption.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the address listed above for the filing of the response. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Prolink Inc., 7970 S. Kyrene, Tempe, AZ 85284.

FEDERAL COMMUNICATIONS COMMISSION

Catherine Deaton
District Director, Los Angeles Office
Western Region
Enforcement Bureau

Enclosure: FCC List of Small Entities

⁸See 47 C.F.R. § 1.1914.